

WD:2005:0118  
Attachment C

LEASE NO. 19-106436-C-LW

LEASE AGREEMENT BETWEEN  
PETER L. KROG AND PARTNERS  
AND  
WEST VALLEY NUCLEAR SERVICES COMPANY LLC (WVNSCO)  
FOR  
GENERAL OFFICE SPACE

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PURPOSE

THIS LEASE, entered into the \_\_\_\_\_ day of \_\_\_\_\_, 2005 by and between Peter L Krog and Partners, Edward G. Lorenz, and Kenneth W. Lorenz whose business address is 4 Centre Drive, Orchard Park, New York, 14127 (hereinafter called the "Lessor"), and West Valley Nuclear Services Company LLC (hereinafter called the "Lessee"), a Delaware company with operating offices in West Valley, New York, acting under its Contract No. DE-AC07-81NE44139 with the United States of America, represented by the United States Department of Energy (called "DOE" or the "Government");

WITNESSETH THAT

The parties hereto, for the considerations hereinafter set forth, covenant and agree as follows:

ARTICLE 1 - DESCRIPTION

The Premises which are the subject of this Lease consist of:

Portions of a three-building office facility of approximately 34,414 ft<sup>2</sup> of net usable area located on approximately 10 acres of property on Route 219 and County Road 53 in Cattaraugus County, New York. The premises to be occupied include the "Central Building" and the north half of the "South Building," (25,780 square feet) and the south half of the "South Building" (an additional 8,634 square feet)

ARTICLE 2 - BASIC LEASE PROVISIONS, TERM, AND RENT

The following are certain lease provisions which are a part of, and in certain instances, are referred to in more detail in subsequent articles of this lease:

A. LESSOR:

Peter L Krog and Partners

- B. LESSEE:  
West Valley Nuclear Services Company LLC
- C. SIZE OF PREMISES: 34,414 ft<sup>2</sup> net usable area
- D. TERM: 1 year  
4 six-month options (years 2-3)
- E. RENT: \$15 50/ft<sup>2</sup> net usable area/year
- F. SERVICES:

All of the services with an X under "Lessor" are the responsibility of Lessor and any cost associated with the services will be paid by Lessor and are included in the lease rate. All services with an X under "Lessee" are the responsibility of Lessee, and the costs associated with these services will be paid by Lessee as follows:

	<u>Lessor</u>	<u>Lessee</u>
Building maintenance	X	
Parking lot maintenance	X	
Taxes	X	
Building insurance	X	
Utilities	X	
Janitorial services and trash removal		X
Snow removal		X
Sewage	X	
Water	X	
Bottled drinking water		X
Grass cutting, landscape Maintenance	X	
Telephone equipment & billing		X
Office furniture		X
Termination of cabling to open offices (i.e., telephone, data, and power)		X

### ARTICLE 3 - TITLE

The Lessor warrants it has good title to the property covered by this Lease, or sufficient interest and rights in the property to guarantee the lease agreement with no interference to the Lessee's rights of possession under the lease. Should the Lessee suffer any damages or expenses as the result of any defect in the Lessor's title or rights and interests in the property, the Lessor shall reimburse the Lessee for all such damages or expenses.

### ARTICLE 4 - DELIVERY OF PREMISES

The Demised Premises shall be delivered to Lessee for beneficial occupancy on the commencement date of this lease which is, \_\_\_\_\_ ("Delivery Date"). Lessee's obligation to pay rent does not

begin until the premises are delivered to Lessee for beneficial occupancy. In the event the Demised Premises are not delivered to Lessee by the Delivery Date, Lessee may terminate the lease.

#### ARTICLE 5 - TERM OF LEASE AND OPTION TO EXTEND TERM

TO HAVE AND TO HOLD the above Premises with their appurtenances for the term of one year beginning the day after the Premises are delivered to Lessee for beneficial occupancy and ending at midnight twelve (12) months thereafter provided that, this lease may, at the option of the Lessee or the Government, be renewed for up to four renewal terms of six (6) months at the rental rate specified in Article 6 and under the terms and conditions specified herein, provided notice be given in writing to the Lessor at least sixty (60) days before this lease or any renewal thereof would otherwise expire, that the option is exercised.

Payment by Lessee and acceptance of payment by Lessor of the first months rent for the option renewal term shall constitute exercise of the renewal option irrespective of timely submittal by Lessee of notice to renew.

#### ARTICLE 6 - RENTAL PAYMENTS

- A. Base Year - The Lessee will pay the Lessor rent at the annual rate of five hundred thirty-three thousand four hundred twelve dollars (\$533,412), which computes to the rate of forty-four thousand four hundred fifty-one dollars (\$44,451) per calendar month in arrears, commencing with the effective date of this Lease.
- B. For the first six-month option term the Lessee will pay the Lessor at the annual rate of five hundred thirty-eight thousand two hundred twenty-four dollars (\$538,224) which computes to the rate of forty-four thousand eight hundred fifty-two dollars (\$44,852) per calendar month.
- C. For the second six-month option term the Lessee will pay the Lessor at the annual rate of five hundred forty-three thousand forty-eight dollars (\$543,048) which computes to the rate of forty-five thousand two hundred fifty-four dollars (\$45,254) per calendar month.
- D. For the third six-month option term the Lessee will pay the Lessor at the annual rate of five hundred forty-seven thousand eight hundred seventy-two dollars (\$547,872) which computes to the rate of forty-five thousand six hundred fifty-six dollars (\$45,656) per calendar month.
- E. For the fourth six-month option term the Lessee will pay the Lessor at the annual rate of five hundred fifty-three thousand thirty-two dollars (\$553,032) which computes to the rate of forty-six thousand eighty-six dollars (\$46,086) per calendar month.
- F. All rental payments under this lease will be made by the Lessee on a calendar month basis, in arrears, beginning at the end of the first calendar month of the lease term, without submission of invoices or vouchers.
- G. If the effective date of this lease is not on the first day of a month, the rental payment for the first month of occupancy by the Lessee shall be pro-rated to cover the fractional part of the month from the beginning date through the last day of that calendar month.
- H. Funds are not presently available for performance under this lease beyond September 30, 2005. WVNSCO's obligation for performance of this lease beyond that date is contingent upon the availability of appropriated funds from the U.S. Department of Energy from which payment can be made.

- I. If the lease of the optional portion of the South Building is cancelled during the lease of the facility, the annual rate/ft.<sup>2</sup> of the remainder of the facility will increase by one dollar (\$1) per ft.<sup>2</sup> / year, as long as the rental rate remains within the fair market range (optional to use in lease)

#### ARTICLE 7 - ORDER OF PRECEDENCE

In the event of any inconsistency between provisions of this lease, the inconsistency shall be resolved by giving precedence as follows: (1) Modifications or Alterations to the lease (in reverse numerical order), (2) the lease, and (3) Other Provisions of the lease incorporated by reference and made a part hereof. Any inconsistency between provisions of this lease shall be promptly brought to the attention of the Lessee's Subcontract Administrator, prior to any action related thereto by the Lessor.

#### ARTICLE 8 - APPLICABLE CODES AND ORDINANCES

The Lessor, as part of the rental consideration, agrees to comply with all codes and ordinances applicable to the ownership and establishment of the Premises at its own expense, to obtain all necessary permits and related items. The Lessee agrees to comply with all codes and ordinances applicable to its tenancy and use of the said Premises.

#### ARTICLE 9 - CANCELLATION

The Lessee may upon 60 day advance written notice to Lessor cancel the optional portion of this Lease or other portions at any time during the option term(s) which would increase the rental rate on the remaining net useable area by one dollar (\$1) per ft.<sup>2</sup> per year. Rental payments after total cancellation shall be payable through the time the Lessee occupies the Premises. Rental payments after partial cancellation shall be reduced in proportion to the related reduction in occupancy of the Premises.

Notwithstanding the above, cancellation of the lease because of nonperformance by the Lessor or damage to the leasehold that renders the space uninhabitable and is not caused by Lessee shall not incur any financial obligation by Lessee.

#### ARTICLE 10 - TAXES, UTILITIES AND BUILDING SERVICES

- A. All real estate taxes and other assessments which may be made against the Premises leased hereunder during the term of the lease will be paid by Lessor prior to delinquency. If the Lessor fails to pay any such taxes or assessments prior to delinquency, the Lessee shall have the right to pay same and to deduct from any rent which may then or thereafter be due.
- B. Snow and ice removal shall be provided by the Lessee and are not included in the lease rate. The removal will include all entrances, exterior walkways, parking lots and driveways used by the Lessee when the snow accumulation exceeds two (2) inches at any time from 6 AM to 4:30 PM weekdays to allow safe passage of vehicles and personnel. If there are other tenants in the facility, the costs may be prorated.
- C. Routine preventative maintenance of mechanical systems shall be provided by Lessor (See Article 11.C) and is included in the lease rate. Parking lot maintenance and exterior lighting maintenance shall be provided by Lessor and are included in the lease rate.
- D. The Lessee will pay when due, all telecommunication expenses allocable to its occupancy which may become due and payable by reason of the Lessee's use and occupancy of said Premises.
- E. Janitorial services and supplies and trash removal shall be provided by the Lessee and are not included in the lease rate.

ARTICLE 11 - MAINTENANCE AND REPAIR

A. The Lessor warrants the mechanical equipment and the utilities to be in good, serviceable and proper operating condition and shall maintain the Demised Premises, including the parking lot, and any and all equipment, fixtures, and appurtenances (including all plumbing, heating, cooling systems, and all electrical and mechanical devices and fixtures), furnished by the Lessor under this lease in good repair and tenantable condition, except in case of damage arising from the act or the negligence of the Lessee's agents or employees. For the purpose of so maintaining said Premises and property, the Lessor may at reasonable times, and with the approval of the authorized Lessee representative in charge, enter and inspect the same and make any necessary repairs thereto. Lessor representatives shall be permitted access to the Premises subject to Lessee security standards applied to all visitors, vendors, and Lessee employees.

B. The Lessor shall prepare a Maintenance Plan delineating the scheduled activities that the Lessor will take to maintain the Premises in good repair and working order. The plan is to include but not limited to:

Maintenance work which is repetitive in nature that is normally performed on a cyclical basis at planned frequencies to extend and maintain the condition and life of the Premises such as periodic overhauls of equipment and replacement of worn parts.

Scheduled repair or upgrades to the building such as roofing, parking lot sealing and striping, access road maintenance, and sewage system.

C. The Lessor will provide routine preventative maintenance including replacement and testing as follows:

Perform routine preventative maintenance on Premises systems and equipment in accordance with the manufacturer's recommendation. Preventative maintenance will include periodic inspections, adjustments, lubrications, and minor repairs of equipment and systems for the purpose of both extending their useful life and reducing the frequency and magnitude of breakdown repairs.

Repair or replace damaged or inoperable parts.

Testing of fire protection and security systems.

Note: Replacement of lamps in lights and other minor items may be performed at the Lessee's option by the Lessee.

D. Work performed by the Lessor in or on the Demised Premises will require the Lessor to obtain approval from the designated Lessee Building Manager or designee (hereafter referred to as the Building Manager) before beginning work. Any work activity that may impact the Premises, disrupt the occupants, require security approval or escort or cause the potential of a safety hazard must be approved and coordinated through the Building Manager at least 48 hours in advance. Emergency actions required to address an immediate situation will be approved by the Building Manager on an expedited basis.

Written approval from the Building Manager is necessary to disrupt building access, electrical power, fire water service, or any other utility serving the Premises. The Lessor must acquire and meet all environmental, health, and safety codes. The Building Manager will assist the Lessor in obtaining permits required by the Lessee. When there is a possibility of a release to or contamination of the environment from a work activity performed by the Lessor, the Lessor is to



identify this possibility to the Building Manager in writing when requesting approval to perform the work

The Lessor shall inform the Building Manager of the daily status of work in progress. At the completion of tasks that are performed by the Lessor, the Building Manager shall be notified as to the completion. The Lessee shall have the right to inspect the work at any time. Lessor shall compensate the Lessee for damages which may be the result of Lessor's noncompliance with these work procedures.

The Lessee shall provide to the Lessor the name, office location, and telephone number of the Lessee Building Manager and designated back up upon occupancy

- E. The Lessee shall have the right, at any time, to assume any or all of Lessor responsibilities, or to transfer to the Lessor, any or all Lessee responsibilities set forth herein regarding Premises expenses, services, or operations, and upon such assumption or transfer of Premises expenses, services, or operations, an equitable rent adjustment shall be established.

#### ARTICLE 12 - FAILURE IN PERFORMANCE

In the event of failure by the Lessor to provide any obligation, service, utility, maintenance, or repairs required under this lease, within a reasonable time after written notice to the Lessor, the Lessee shall have the right to secure said services, utilities, maintenance, or repairs and shall deduct the cost thereof from rental payments.

#### ARTICLE 13 - INSURANCE

It is agreed that the Lessor and Lessee shall respectively obtain whatever insurance that they may consider prudent and necessary to protect their respective and separate best interests and that neither party shall be obliged to obtain insurance as regards the other party's real or personal property; provided, however, that this provision shall not be constructed as a waiver of any rights of subrogation or entitlements in law by either party.

#### ARTICLE 14 - ALTERATIONS

The Lessee shall have the right during the existence of this lease to make alterations, attach fixtures, and erect structures or signs in or upon the Premises hereby leased, which fixtures, additions or structures so placed in, on, upon, or attached to the said Premises shall be and remain the property of the Lessee and may be removed or otherwise disposed of by the Lessee unless such equipment and fixtures are constructed in ways that become permanent within the facility. Upon expiration or termination of this lease such alterations, additions, or improvements shall, at the option of the Lessee (1) become the property of the Lessor, who shall thereupon waive all rights to restoration of the Premises affected by such alterations, additions or improvements or (2) be removed by the Lessee, provided that any part of the Premises affected by such removal shall be restored to its original conditions, reasonable wear and tear excepted. If the lease contemplates that the Lessee is the sole occupant of the building, for purposes of this clause, the leased Premises include the land on which the building is sited and the building itself. Otherwise, the Lessee shall have the right to tie into or make any physical connection with any structure located on the property as is reasonable necessary for appropriate utilization of the leased space.

#### ARTICLE 15 - DESTRUCTION OF PREMISES

- A. In the event of a partial destruction of the said Premises during the said term, or any extension thereof, from any cause, the Lessor shall forthwith repair the same, provided such repairs can be made within sixty (60) days from the date of said partial destruction; but such partial destruction

shall in no way annul or void this Lease, except that the Lessee shall be entitled to a proportionate reduction of rent from the date of such partial destruction and continuing until such repairs are made, such proportionate reduction to be based upon the extent to which the making of such repairs shall interfere with the business carried on by the Lessee in the said Premises.

- B. In the event of partial destruction to such extent that the Lessor cannot, with normal effort, complete the necessary repairs to restore the Premises within sixty (60) days as hereinabove provided, the Lessor shall, within fifteen (15) days after such partial destruction of the said Premises, advise the Lessee of its inability to complete the necessary repairs and restoration within sixty (60) days. In such event, the parties shall agree as to a reasonable time in which the repairs will be completed. Should the parties fail to agree as to an acceptable time to complete such repairs, the failure to agree shall constitute a "dispute" within the "Disputes" article of this Lease. If West Valley Nuclear Services Company LLC., DOE, or one of its other prime contractors is then the Lessee, or alternatively at the option of either party, the Lease may be terminated if agreement is not reached within thirty (30) days.
- C. A total destruction of the buildings or a partial or total taking of the buildings by eminent domain in which said Premises may be situated shall terminate this lease.

#### ARTICLE 16 – ASSIGNMENT AND SUBLETTING

- A. Lessee may assign this lease to the Department of Energy or to any successor agency of the United States Government or to such contractor as the Department of Energy, or its successor agency, may designate to perform Lessee's obligation thereunder. Upon receipt by Lessor of written notice that the Department of Energy, its successor agency, or designee, has accepted an assignment of its lease and assumed such obligations, Lessee shall be relieved of all responsibility hereunder, and Lessor shall thereafter look solely to such assignee for performance of Lessee's obligations. Such assignment shall not be deemed to be a subletting.
- B. Lessee may not (except as hereinafter stipulated) sublet the Leased Premises, or any part thereof, without in each instance obtaining the written permission of the Lessor, which permission shall not be unreasonable withheld. Lessee may, without Lessor's permission, assign this lease and/or sublet the Leased Premises, or any part thereof, to an affiliated, subsidiary, reorganized corporation or any organization which acquires a majority of the shares or assets of the Lessee, a successor entity, the parent or parents of the Lessee, or the Department of Energy for the purpose of continued operation hereunder of the business conducted on said Leased Premises in substantially the manner as before, provided, however, that written notice of such assignment or sublease shall be given to the Lessor. In the event the Department of Energy occupies a portion of the Premises covered by this lease and prefers to contract directly with the Lessor, a lease may be negotiated with the same rates for that portion of the Leased Premises and this lease modified and rental rate reduced proportionately.

#### ARTICLE 17 - CONDITION REPORT

A joint physical survey and inspection report of the Demised Premises shall be made as of the effective date of this lease, reflecting the then present condition, and will be signed on behalf of the parties hereto.

#### ARTICLE 18 - ADMINISTRATION

- A. The Lessor agrees, unless the Lessee is otherwise notified in writing, that Mr. Peter L. Krog II and/or his duly authorized representative will have overall responsibility and authority under the lease, and unless a change in assignment is made by the Lessor, he and/or his duly authorized representative will be available at all reasonable times in connection herewith.

- B. It is agreed that, unless the Lessor is otherwise notified in writing, Lessee's responsibilities under this lease shall be administered by the Manager, Procurement of Lessee and/or his duly authorized representative

#### ARTICLE 19 - NOTICES

Any notice or order given under the terms of this lease shall be considered as having been given:

- A. To the Lessor, if delivered personally to its duly authorized representative at or, if mailed by U. S. Mail, addressed to:

Mr. Peter L. Krog II  
4 Centre Drive  
Orchard Park, New York, 14127

- B. To the Lessee, if delivered personally to the designated representative of the Manager, Procurement, or if mailed by U. S. Mail, certified letter return receipt requested, addressed to:

Manager, Procurement  
West Valley Nuclear Services Company  
10282 Rock Springs Road MS WV-B1F  
West Valley, NY 14171-0191

#### ARTICLE 20 - COVENANT AGAINST CONTINGENT FEES

- A. The Lessor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Lessee shall have the right to annul this lease without liability or, in its discretion, to deduct from the rental price or consideration, or otherwise recover the full amount of the contingent fee.

- B. "Bona fide agency," as used in this clause, means an established commercial or selling agency (including licensed real estate agents or brokers), maintained by a Lessor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain contracts from the Lessee nor holds itself out as being able to obtain any such contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by the Lessor and subject to the Lessor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain such contracts for the Lessee nor holds out as being able to obtain any such contract or contracts through improper influence.

"Contingent Fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a lease from the Lessee

"Improper influence," as used in this clause, means any influence that induces or tends to induce an employee or officer of the Lessee to give consideration or to act regarding a lease on any basis other than the merits of the matter.

ARTICLE 21 - OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress or resident Commissioner shall be admitted to any share or part of this lease, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this lease if made with a corporation for its general benefit.

ARTICLE 22 - EQUAL OPPORTUNITY

During the performance of this Lease, the Lessor agrees as follows:

- A. Definition. "United States," as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.
- B. If, during any 12-month period (including the 12 months preceding the award of this contract), the Lessor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Lessor shall comply with paragraphs B.1 through B.11 of this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Lessor shall provide information necessary to determine the applicability of this clause.
  - (1) The Lessor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Lessor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.
  - (2) The Lessor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to- employment; upgrading; demotion; transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship
  - (3) The Lessor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Lessee that explain this clause
  - (4) The Lessor shall, in all solicitations or advertisements for employees placed by or on behalf of the Lessor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
  - (5) The Lessor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Lessee advising the labor union or workers' representative of the Lessor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
  - (6) The Lessor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
  - (7) The Lessor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Lessor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR Part 60-1. Unless the Lessor has filed within the

12 months preceding the date of contract award, the Lessor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms

(8) The Lessor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Lessor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Lessor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Lessor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Lessor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Lessor shall include the terms and conditions of paragraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Lessor shall take such action with respect to any subcontract or purchase order as the Lessee may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Lessor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Lessor may request the United States to enter into the litigation to protect the interests of the United States.

C. Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

#### ARTICLE 23 - Prohibition of Segregated Facilities

- A. "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.
- B. The Lessor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Lessor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

- C. The Lessor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

#### ARTICLE 24 – EXAMINATION OF RECORDS BY LESSEE

The Lessor agrees that the Lessee shall, until the expiration of 3 years after final payment under this lease, have access to and the right to examine any books, documents, papers, and records of the Lessor involving transactions related to this lease or compliance with any clauses thereunder.

#### ARTICLE 25 - LESSOR'S SUCCESSORS

The terms and provisions of this lease and the conditions herein shall bind the Lessor, and the Lessor's heirs, executors, administrators, successors, and assigns.

#### ARTICLE 26 - HOLDING OVER

In the event that Lessee shall not immediately surrender the Premises on the date of the expiration of the lease term, Lessee shall become a Lessee by the month at the rate in effect during the last month of the lease term. Said monthly tenancy shall commence on the first day following the expiration of the lease term. In the hold over status, Lessor and Lessee shall be subject to all the terms, conditions, covenants and agreements of this lease. Lessee shall give Lessor at least sixty (60) days written notice of any intention to quit the Premises, and the Lessee shall be entitled to sixty (60) days written notice by Lessor to quit the Premises.

#### ARTICLE 27 - DISPUTES

- A. The parties agree that the appropriate forum for resolution of any dispute, litigation, or claim pertaining to the lease which is not disposed of by agreement shall be decided by litigation in a court of competent jurisdiction upon filing of a legal action by the aggrieved party. It is further agreed by the Lessor that litigation shall be limited and confined exclusively to the appropriate court of competent jurisdiction located within the State of New York as follows:
- (1) Subject to paragraph A.(2) of this clause, any such dispute, litigation, or claim shall be brought and prosecuted exclusively in Federal District Court, with venue in the United States District Court for the Western District of New York in Buffalo, New York.
  - (2) Provided, however, that in the event that the requirements for jurisdiction in any Federal District Court are not present, such dispute, litigation or claim shall be brought in the Supreme Court for the State of New York, with venue in the Supreme Court of New York for Erie County.
- C. Any substantive issue of law in such dispute, litigation, or claim shall be determined in accordance with the body of law applicable to procurement of goods and services by the Federal Government. The Contract Disputes Act of 1978 (U.S.C. Sections 601-613) shall not apply to this lease, and nothing in this clause shall grant to the Lessor by implication any statutory or regulatory rights or remedies not expressly set forth in the lease.
- D. There shall be no interruption in the prosecution of the work, and the Lessor shall proceed diligently with the performance of this lease pending final resolution of any dispute, litigation, or claim arising under or related to this lease between the parties hereto or between the Lessor and lower-tier subcontractors or suppliers.

#### ARTICLE 28 - HAZARDOUS SUBSTANCES

By executing this lease, Lessor warrants and represents that any use, storage, treatment, or transportation of hazardous substances that has occurred in or on the Premises prior to the date of this lease has been in compliance with all applicable federal, state, and local laws, regulations, and ordinances and that no release, leak, discharge, spill, disposal, or emission of hazardous substances has occurred in, or under the Premises and that the Premises are free from hazardous substances as of the date of this Lease. Lessor also warrants that any underground storage tanks on the leased Premises are in compliance with 40 C.F.R. 280 et seq. and applicable state and local laws, regulations, and ordinances, and will remain in compliance throughout the term of this lease.

Lessor will indemnify and hold harmless Lessee, DOE and the federal government from all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, all sums paid for settlement of claims, attorneys fees, consultant and expert fees) arising during or after the lease term for or in connection with the presence of hazardous substances in or on the Premises. This indemnification includes, but is not limited to, any costs incurred due to any investigation of the site or any cleanup, removal, or restoration mandated by federal, state, or local agency or political subdivision. This indemnification specifically includes all costs due to hazardous substances that flow, diffuse, migrate or percolate into, onto, or under the Premises after the lease term commences. Hazardous substances, as used in this article, include those substances within the definition for hazardous substance under CERCLA at 40 C.F.R. 300.5. The Lessor shall remove or otherwise disposition such hazardous substances in accordance with all federal, state and local laws, regulations and ordinances.

If Lessor violates any of the provisions of this article, Lessee, at its sole option, may elect any of the following remedies and such remedies are not mutually exclusive. Lessee may require removal of any hazardous substance and restoration of the leased Premises solely at Lessor's expense. Lessee may elect to vacate the Premises and any contrary provision in this lease notwithstanding, no further rents are due after the date Lessee vacates the Premises. Lessee may also elect to remain in the leased Premises and withhold payment of rent until all hazardous substances have been removed and the leased Premises have been fully restored to their condition prior to removal, all at Lessor's expense. Lessee is also entitled to a reduction in rent in proportion to any portion of the leased Premises that are made untenantable for occupancy as a result of the presence of hazardous substances, during their removal, or during restoration of the Premises.

#### ARTICLE 29 - LESSEE'S COVENANT - HAZARDOUS MATERIALS

Lessee agrees to not cause or permit any hazardous materials, including laboratory samples, to be treated, stored or disposed of, generated or used in the leased Premises, except that Lessee may store, use or dispose of products, including hazardous materials, customarily found in offices and used in conjunction with the operation and maintenance of the Leased Premises if Lessee complies with all applicable Environmental laws.

#### ARTICLE 30 - LESSOR'S INDEMNIFICATION

Except to the extent caused by the sole negligence of Lessee or the Government, Lessor agrees to indemnify, save harmless and defend Lessee, its officers and employees, and/or the Government, its officers and employees, from and against any and all losses, liabilities, claims, penalties, forfeitures, suits and the costs and expenses incident thereto (including costs of defense, settlement and reasonable attorney's fees), which any or all of them may hereafter incur, become responsible for or pay out as a result of death or bodily injuries to any person, destruction or damage to any property, public or private, or any violation of any laws, regulations or orders, caused by or arising out of, in whole or in part: (i) Lessor's breach of any term, provision or warranty contained in this Lease; (ii) any negligence or willful act or omission of Lessor, its employees, agents or any subcontractors in the performance of this lease; (iii) any

violation by Lessor of any laws, regulations or ordinances relating to the performance of services hereunder.

ARTICLE 31 - ARTICLES INCORPORATED BY REFERENCE

The following Federal Acquisition Regulation (FAR) clauses, Department of Energy Acquisition Regulation (DEAR) clauses, and Federal Acts are incorporated herein by reference.

- A Affirmative Action for Workers with Disabilities, FAR 52.222-36
- B Equal Opportunity for Special disabled Veterans, Veterans of the Vietnam Era, and other Eligible Veterans, FAR 52.222-35
- C Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans, 52.222-37
- D Limitation on Payments to Influence Certain Federal Transactions, FAR 52.203-12
- E Architectural Barriers Act
- F Americans with Disabilities Act of 1990, Appendix A to 28 CFR, Part 36 - Standards for Accessible Design

IN WITNESS WHEREOF, parties hereto have signed this Lease on the date(s) written below.

LESSOR

LESSEE

Peter L. Krog and Partners

West Valley Nuclear Services Company LLC

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

STATE OF NEW YORK, County of (\_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me a Notary Public in and for said State, personally appeared \_\_\_\_\_ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that \_\_\_\_\_ executed the same

IN WITNESS WHEREOF, I have set my hand and seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for the State of New York

Residing at \_\_\_\_\_

My commission Expires \_\_\_\_\_



STATE OF NEW YORK, County of (\_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me a Notary Public in and for said State, personally appeared \_\_\_\_\_ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that \_\_\_\_\_ executed the same.

IN WITNESS WHEREOF, I have set my hand and seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for the State of New York

Residing at \_\_\_\_\_

My commission Expires \_\_\_\_\_